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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BAHRAM GHOLIZADEH and
FARIDEH GHOLIZADEH,

Plaintiffs,

v.

WELLS FARGO BANK, N.A. and DOES
1 to 100,

Defendants.

Case No. 2:14-CV-07575-ODW-AGR

**ORDER GRANTING DEFENDANT
WELLS FARGO'S MOTION TO
DISMISS [16]**

I. INTRODUCTION

On December 3, 2014, the Court dismissed the Complaint filed by Plaintiffs Bahram Gholizadeh and Farideh Gholizadeh, granting leave to amend two claims. After Plaintiffs failed to file a First Amended Complaint by November 12, 2015, Defendant Wells Fargo Bank, N.A. moved to dismiss the action for failure to comply with this Court's order pursuant to Federal Rule of Civil Procedure 41(b). In their Opposition, Plaintiffs fail to provide any excuse for the ten-month delay. For the reasons discussed below, the Court **GRANTS** Wells Fargo's Motion to Dismiss and accordingly **DISMISSES** this action with prejudice. (ECF No. 16.)¹

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¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 **II. FACTUAL BACKGROUND**

2 On August 26, 2014, Plaintiffs filed a complaint in Los Angeles County
3 Superior Court seeking declaratory and injunctive relief for alleged violations of
4 California Civil Codes § 2923.5 and § 2923.6 and the Unfair Competition Law,
5 breach of the implied covenant of good faith and fair dealing, and promissory
6 estoppel. (*See* Not. of Removal, Ex. A.) Wells Fargo subsequently removed the case
7 to federal court. (ECF No. 1.) On October 21, 2014, Wells Fargo filed a Motion to
8 Dismiss the Complaint pursuant to Federal Rules of Civil Procedure 9(b) and 12(b).
9 (ECF No. 9.) On December 3, 2014, after receiving no opposition from Plaintiffs, the
10 Court dismissed with prejudice the allegations based on California Civil Code §
11 2923.5 and § 2923.6 and breach of the implied covenant of good faith and fair dealing,
12 and dismissed without prejudice the remaining two claims. (ECF No. 12.) In a later
13 order, the Court gave the Plaintiffs until January 5, 2015 to file a First Amended
14 Complaint, following Well Fargo’s request for a deadline. (ECF Nos. 13, 15.)

15 This case lay dormant until November 12, 2015, when Wells Fargo again filed a
16 Motion to Dismiss, this time pursuant to Rule 41(b). (ECF No. 16.) Plaintiffs timely
17 opposed, and Wells Fargo timely replied. (ECF Nos. 17, 18.)

18 **III. DISCUSSION**

19 Under Rule 41(b), a district court has authority to *sua sponte* dismiss an action
20 for failure to prosecute or failure to comply with court orders. Fed. R. Civ. P. 41(b);
21 *see also Link v. Wabash R.R.*, 370 U.S. 626, 629–31 (1962); *Hells Canyon Pres.*
22 *Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). A court must weigh
23 five factors when determining whether to dismiss a case under Rule 41(b): “(1) the
24 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage
25 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
26 disposition of cases on their merits; and (5) the availability of less drastic
27 alternatives.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992). “[The
28 Ninth Circuit] may affirm a dismissal where at least four factors support dismissal, ...

1 or where at least three factors “strongly” support dismissal.” *Yourish v. California*
2 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (internal quotations omitted). As set
3 forth below, the Court finds that four of the five factors weigh in favor of dismissal.

4 **A. Public’s Interest in Expeditious Resolution of Litigation**

5 The Ninth Circuit has explained that “the public’s interest in expeditious
6 resolution of litigation always favors dismissal.” *Id.* Furthermore, the fact that
7 Plaintiffs completely deserted this case for ten months (by failing to either file a First
8 Amended Complaint or ask for an extension of the deadline) adds even more weight
9 to this factor. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (noting
10 the plaintiff’s failure to pursue the case for almost four months as a consideration for
11 this factor.) Accordingly, this factor strongly weighs in favor of dismissal.

12 **B. Court’s Need to Manage Its Docket**

13 Courts next consider whether the delay in a particular case interferes with its
14 ability to manage its docket efficiently. *See id.* Here, the Court has already dismissed
15 the Complaint once, with leave to amend two claims. (*See* ECF No. 12.) Since that
16 dismissal, the Court has heard nothing from Plaintiffs. Indeed, in their Opposition to
17 Wells Fargo’s Motion to Dismiss, Plaintiffs propose no new deadline for submission
18 of a First Amended Complaint. From this dearth of information, the Court assumes
19 that Plaintiffs intend to continue drawing this case out, consuming even more of the
20 Court’s schedule, and further allowing Plaintiffs, not the Court, to control the schedule
21 of this case. *See Jara v. San Bernardino Sheriff’s Dept.*, 2015 WL 127885, at *3
22 (C.D. Cal. Jan. 6, 2015) (finding that “[p]laintiff’s inaction hinders the Court’s ability
23 to move this case toward disposition and indicates that Plaintiff does not intend to
24 litigate this action diligently.”) Because of this, the Court finds that this factor
25 strongly favors dismissal.

26 **C. Risk of Prejudice to Wells Fargo**

27 When determining whether a plaintiff’s delay poses a risk of prejudice to the
28 defendant, courts look to whether the plaintiff’s actions “impair[] [the] defendant’s

1 ability to proceed to trial or threaten[] to interfere with the rightful decision of the
2 case.” *Pagtalunan*, 291 F.3d at 642. A delayed lawsuit, in and of itself, is not
3 prejudicial enough to warrant dismissal because delays are the “realities of the system
4 that have to be expected.” *Id.* However, when the delays are unreasonable, courts
5 presume that the defendant is prejudiced. *See In re Phenylpropanolamine Prods.*
6 *Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006) (“The law also presumes prejudice
7 from unreasonable delay.”). The plaintiff may rebut this presumption by showing that
8 the defendant suffered no actual prejudice. *Id.* Additionally, if the plaintiff is able to
9 offer some viable excuse for the delay, the burden of production shifts to the
10 defendant to show actual prejudice. *Id.*

11 Here, Plaintiffs offer no excuse for their failure to file a First Amended
12 Complaint by the Court’s deadline. Furthermore, Plaintiffs offer no explanation as to
13 why they abandoned this case for ten months. The Court therefore finds Plaintiffs’
14 delay unreasonable and presumptively prejudicial. Because Plaintiffs do not suggest
15 that Wells Fargo has not suffered any actual prejudice, the presumption is not
16 rebutted. This factor therefore weighs strongly in favor of dismissal.

17 **D. Public Policy Favoring Disposition on the Merits**

18 Generally, the public policy favoring disposition of a case on its merits weighs
19 against dismissal. *See Pagtalunan*, 291 F.3d at 643. However, when a case is stalled
20 or unreasonably delayed because of a party’s failure to comply with deadlines, this
21 factor “lends little support” to that party. *In re Phenylpropanolamine Prods. Liab.*
22 *Litig.*, 460 F.3d at 1228. Here, Plaintiffs bore the responsibility of moving the case
23 forward after the Complaint was dismissed. But Plaintiffs did not discharge this duty.
24 *See Morris v. Morgan Stanly & Co.*, 942 F.2d 648, 652 (9th Cir. 1991) (“Although
25 there is indeed a policy favoring disposition on the merits, it is the responsibility of
26 the moving party to move towards that disposition at a reasonable pace. . . .”)
27 Therefore, although this factor weighs against dismissal, it ultimately lends little
28 support to Plaintiffs.

1 **E. Availability of Less Drastic Alternatives**

2 The Ninth Circuit has explained that a “district court need not exhaust every
3 sanction short of dismissal before finally dismissing a case, but must explore possible
4 and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.
5 1986). A district court may satisfy the requirement of exploring alternative sanctions
6 by explicitly explaining why the alternatives would be inadequate. *See Malone v. U.S.*
7 *Postal Serv.*, 833 F.2d 128, 132 (9th Cir. 1987).

8 Wells Fargo argues that the Court already employed a less drastic sanction on
9 Plaintiffs by dismissing their claims with leave to amend. (Mot. 3.) This argument is
10 erroneous because dismissing the Complaint with leave to amend “was not a sanction
11 in response to Plaintiffs’ failure to obey a court order.” *Yourish*, 191 F.3d at 992.
12 Dismissing the case with prejudice would be a sanction for Plaintiff’s failure to obey
13 the Court’s order regarding the First Amended Complaint.² *Id.*

14 Instead, the Court believes that any lesser sanctions would be inadequate and
15 ineffective in this case. First, Plaintiffs never requested an extension to the deadline
16 set by the Court for submitting a First Amended Complaint. Requesting an extension
17 would show the Court that Plaintiffs had some ongoing concern in the case. Second,
18 Plaintiffs did not communicate with the Court in any way for almost ten months,
19 further showing that they seem to have forgotten about the pending case. Finally, in
20 their Opposition to the present motion, Plaintiffs do not apologize for failing to submit
21 a timely First Amended Complaint, request an extension of the deadline to submit a
22 First Amended Complaint, or offer *any* hint of an explanation as to why they ignored
23 the Court’s Order. The only mention of a First Amended Complaint occurs when
24 Plaintiffs request that the Court allow them to “amend the Complaint according to the
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26 ² Plaintiffs also seem to make this argument in their Opposition, arguing that the Court should have
27 analyzed the Rule 41(b) factors in its Order dismissing the case with leave to amend. (Opp’n 3–4.)
28 Analyzing the factors at that point would have been inappropriate as the Court was not actually
sanctioning Plaintiffs for anything at that time as Plaintiffs had, thus far, complied with the Court’s
orders.

1 original order.” (Opp’n 4.) This request is confusing as the original Order required
2 Plaintiffs to submit a First Amended Complaint by January 5, 2015. (ECF No. 15.)
3 Plaintiffs seem to have lost interest in this case, meaning an extension of the deadline
4 for submitting a First Amended Complaint would likely be ignored as well, making it
5 an ineffective sanction. *See Croaker v. Arias*, No. CV 15-1237-AG (AS), 2015 WL
6 5829876, at *3 (C.D. Cal. Aug. 5, 2015) (“[T]he Court finds that Plaintiff has lost
7 interest in *his own lawsuit*. Therefore, the Court concludes that less drastic alternatives
8 would be inadequate at remedying Plaintiff’s failure to prosecute and obey court
9 orders.”). Because lesser sanctions would be ineffective and inadequate, the Court
10 finds that this factor weighs in favor of dismissal.

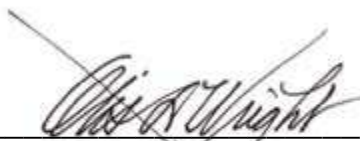
11 Four of the Rule 41(b) dismissal factors weigh in favor of dismissal, and only
12 one factor slightly weighs against dismissal. Accordingly, dismissal of the action with
13 prejudice is appropriate.

14 IV. CONCLUSION

15 For the reasons discussed above, Defendants’ Motion to Dismiss is
16 **GRANTED**. This case is **DISMISSED WITH PREJUDICE**.

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18 **IT IS SO ORDERED.**

19
20 December 17, 2015

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24 **OTIS D. WRIGHT, II**
25 **UNITED STATES DISTRICT JUDGE**
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